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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

CR No. 09-30041-PA

Plaintiff,

v.

CLIFFORD R. TRACY,

ORDER

Defendant.

PANNER, District Judge:

After a bench trial, I found defendant Clifford R. Tracy guilty of violating 36 C.F.R. § 261.10(p) by conducting mining operations without an approved operating plan. Defendant moves for a judgment of acquittal. I deny the motion.

STANDARDS

The court should deny a motion for judgment of acquittal under Federal Rule of Criminal Procedure 29(c) if, "'viewing the evidence in the light most favorable to the government, a rational trier of fact could have found the defendant guilty beyond a reasonable doubt.'" United States v. Ching Tang Lo, 447 F.3d 1212, 1221 (9th Cir. 2006) (quoting United States v. Alston, 974 F.2d 1206, 1210 (9th Cir.1992)). This test applies to both bench

and jury trials. United States v. Magallon-Jimenez, 219 F.3d 1109, 1112 (9th Cir. 2000).

DISCUSSION

Because defendant's planned mining operations were likely to disturb surface resources in a national forest, the Forest Service required that defendant submit a plan of operations. See Clouser v. Espy, 42 F.3d 1522, 1530 (9th Cir. 1994). Defendant contends that he should be acquitted because the Forest Service unreasonably delayed making a decision on his plan of operations. Rather than challenging the agency's actions through available legal avenues, however, defendant chose to proceed without an approved plan. Compliance with Forest Service regulations was not optional. See United States v. Weiss, 642 F.2d 296, 298 (9th Cir. 1981). Miners "may not blithely ignore Forest Service regulations and argue afterward that their conduct was 'reasonable.'" United States v. Doremus, 888 F.2d 630, 633 (9th Cir. 1989).

CONCLUSION

Defendant's motion for judgment of acquittal (#2~~5~~) is denied.

IT IS SO ORDERED.

DATED this 12 day of November, 2009.

A handwritten signature in black ink, appearing to read "Owen M. Panner", is written over a horizontal line.

OWEN M. PANNER
U.S. DISTRICT JUDGE